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In the Matter of:

JAMES A. KAY, JR.

Licensee of one hundred fifty
two Part 90 licenses in the
Los Angeles, California area

WT Docket No.: 94-147

Volume: 4

Pages: 188 through 262

Place: Washington, D.C.

Date: March 19, 1997

Thomas A. Brundage

HERITAGE REPORTING CORPORATION

Official Reporters
1220 L Street, NW, Suite 600
Washington, D.C.
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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of:) WT DOCKET No.: 94-147
JAMES A. KAY, JR.)
Licensee of one hundred fifty)
two Part 90 licenses in the)
Los Angeles, California area)

Courtroom 2
FCC Building
2000 L Street, N.W.
Washington, D.C.

Wednesday,
March 19, 1997

FEDERAL COMMUNICATIONS
COMMISSION
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The parties met, pursuant to the notice of the
Judge, at 10:00 a.m.

BEFORE: HON. RICHARD L. SIPPEL
Administrative Law Judge

APPEARANCES:

On behalf of James A. Kay, Jr.:

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I N D E XWITNESS:PAGE

None.

EXHIBITS:

None.

Hearing Began: 10:00 a.m. Hearing Ended: 11:55 a.m.

P R O C E E D I N G S

JUDGE SIPPEL: We're on the record. We're in a prehearing conference in Wireless Telecommunications Docket Number 94-147. This case is back on remand, so I'm familiar with the attorneys and with the issues, but I'm going to ask counsel at this point to please identify themselves for the record.

MR. FRIEDMAN: Your Honor, appearing for James A. Kay, Jr., Barry Friedman and Scott Fenske.

JUDGE SIPPEL: Good morning, gentlemen.

MR. FRIEDMAN: Good morning, Your Honor.

MR. SCHONMAN: Good morning, Your Honor. Gary Schonman and William Kellett on behalf of the Chief, Wireless Telecommunications Bureau.

JUDGE SIPPEL: All right, good morning. As I say, this case is back here on remand and the only issue that I did address was the first issue with respect to complying, basically with respect to complying with a Bureau request for information. I haven't seen any evidence presented on the other issues, so at least as far as my purposes, I'm looking at this case in a fresh, new way.

There is going to be a lot of hard work to do, I understand that. To the extent that that is of any help to counsel of the parties, I just thought I would express that on the record.

1 Now, I've gotten the prehearing status reports and
2 I just don't feel that there's going to be that much time
3 devoted towards preparing this case for hearing. I'm
4 assuming that the Bureau has its case, or has a case to
5 present and I understand that there is some clean up
6 discovery that probably should be and would be appropriate.
7 But, it looks like the extent of the discovery is
8 considerably more than I would anticipate.

9 I'd like to hear from counsel, from Mr. Schonman
10 and Mr. Kellett with respect to why do you feel that you
11 need that much time with respect to discovery as opposed to
12 getting ready for hearing?

13 MR. SCHONMAN: Your Honor, we haven't had any
14 depositions yet, and certainly we must have depositions
15 before we can go to trial.

16 JUDGE SIPPEL: Right.

17 MR. SCHONMAN: There is the matter of
18 communication from Mr. Kay, the loading information, which
19 we have previously requested and never received, as well as
20 other information from him.

21 We also anticipate there may be a need to go out
22 with further requests for interrogatories.

23 JUDGE SIPPEL: Well, I've seen that all in your
24 status report, but let's start just with the depositions,
25 first of all. You've indicated something in the nature of

1 12 witnesses that you've identified?

2 MR. SCHONMAN: We think that we would have fewer
3 than 12.

4 JUDGE SIPPEL: How many are you going to depose,
5 how many were you anticipating deposing?

6 MR. SCHONMAN: Well, we would anticipate at this
7 point that we would want to depose Mr. Kay.

8 JUDGE SIPPEL: Certainly.

9 MR. SCHONMAN: There may be a handful of others.

10 JUDGE SIPPEL: Well, how many are we talking
11 about, roughly?

12 MR. SCHONMAN: For depositions?

13 JUDGE SIPPEL: Yes, sir.

14 MR. SCHONMAN: Tops, half a dozen, perhaps.

15 JUDGE SIPPEL: Well, that shouldn't take too long.

16 MR. SCHONMAN: For our purposes.

17 JUDGE SIPPEL: I hear you, but I'm saying, for
18 purposes -- the Bureau has the burden of proof and the
19 burden of proceeding.

20 MR. SCHONMAN: Okay.

21 JUDGE SIPPEL: I want to know what it is that you
22 need to do to get ready for trial. Now, you have to depose
23 at least a half dozen witnesses, correct?

24 MR. SCHONMAN: Yes.

25 JUDGE SIPPEL: With an accommodated deposition

1 schedule, that should not take too long, it shouldn't take
2 more than a couple of days at best. What else do you need?
3 Well, you indicated. You said you need information on
4 loading?

5 MR. SCHONMAN: Yes, sir.

6 JUDGE SIPPEL: Now, this is an issue that's been
7 addressed to some extent. Mr. Kay's side represents that
8 they've given you everything on loading, is that correct?

9 MR. SCHONMAN: That's correct.

10 JUDGE SIPPEL: So, there's nothing more for them
11 to give you, according to what they're saying.

12 MR. SCHONMAN: I would respectfully disagree.
13 They may have given us everything that they have, but they
14 haven't given us everything that we've asked for, nor have
15 they given us everything that you've ordered them to
16 provide.

17 JUDGE SIPPEL: Well, they say that that's all that
18 they have. Now, if they say that's all that they have, and
19 they're not complying with the rules, then they have a
20 problem.

21 MR. SCHONMAN: Yes, sir, that's correct.

22 JUDGE SIPPEL: So, how does that impact on your
23 trial preparation? We're not into a compliance proceeding
24 here. This is to show cause why the licenses shouldn't be
25 revoked.

1 MR. SCHONMAN: Your Honor, we have an issue
2 involving loading, the loading of stations. We've asked Mr.
3 Kay repeatedly for his loading information. Your Honor has
4 ordered Mr. Kay to provide this station by station loading
5 information. We have not received that station by station
6 loading information.

7 In order to prosecute that particular issue, we
8 believe it is critical to have that station by station
9 loading information. Now, if Mr. Kay does not have it, and
10 we have fully addressed this point, Mr. Kay can compile it.
11 We've made that argument to Your Honor, and in Your Honor's
12 order compelling him to produce this information, that was a
13 matter that you considered, that he can be compelled to
14 compile information if it's not too burdensome. That's a
15 matter that we addressed, and Your Honor found that it would
16 specifically not be too burdensome to compile this
17 information.

18 JUDGE SIPPEL: Okay, so we can work -- go ahead,
19 I'm sorry.

20 MR. SCHONMAN: In addition, Your Honor, Mr. Kay
21 has indicated in prior pleadings that he can obtain this
22 information. If he can obtain it and it's not too
23 burdensome to compile it, then we ought to have it for two
24 reasons. One because we're entitled to have it. Your Honor
25 has found that this information is relevant, and number two,

1 you compelled him to do it. There is an outstanding order
2 of this Court directing a party to produce certain specific
3 information. We haven't seen that yet.

4 JUDGE SIPPEL: Well, let's just take it one step
5 at a time, though. How long would it take to get the
6 loading information?

7 MR. SCHONMAN: That's a question that Mr. Kay can
8 answer.

9 JUDGE SIPPEL: You don't know?

10 MR. SCHONMAN: I don't know how long it would
11 take. I know that we've been asking for it for over two
12 years.

13 JUDGE SIPPEL: Well, all right. Let me ask Mr.
14 Friedman. What is your position with respect to the loading
15 information?

16 MR. FRIEDMAN: That, as I believe it said in our
17 pleadings, that it would be a very burdensome obligation of
18 this single individual to spend, what is it, hundreds or
19 thousands of hours to put it in the form to satisfy the
20 Bureau. That it is not in that form in his files or on his
21 computer at the moment, and that would require him having to
22 go back to customers, back to old files, to try to replicate
23 history dating back from whatever year Mr. Schonman is
24 looking for. These things change on a month to month basis.

25 It would come down to, does he want to know

1 loading on a particular day, particular week, particular
2 month, particular year? How many years back? Are we
3 talking eight years for each individual day of what the
4 loading was? I mean, these are things that could take
5 hours, weeks, months, maybe years to replicate. They're not
6 in his files at the moment. He can't just press a computer
7 button and pump it out in the form that Mr. Schonman wants
8 it.

9 JUDGE SIPPEL: Okay, now let me get back to you,
10 Mr. Schonman. He says he doesn't have the information to
11 give you. If there's a question as to whether or not he's
12 complied with my order, that's a legal issue that can be
13 addressed perhaps at an appropriate time.

14 My point is, if you don't have that loading
15 information, how does that inhibit you from going to trial?

16 MR. SCHONMAN: It inhibits our ability to
17 prosecute that issue. Although, I might add that the
18 failure of Mr. Kay to produce this loading information would
19 warrant the Bureau drawing adverse conclusions.

20 JUDGE SIPPEL: Well, you don't have to tell me
21 what your theory is, but I think what you're saying is that
22 there are other ways to get at this in terms of the hearing
23 of the issue. Again, I am not talking about an exercise in
24 full compliance with what the Bureau would like to have, or
25 even what the Bureau needs to have in its compliance

1 program.

2 I'm talking about your ability to put your case
3 on. I certainly am not going to delay a hearing date
4 because there is this particular problem with respect to
5 loading information. It is going to reach a point, and I
6 don't know whether you have it, but if you have enough
7 evidence to shift the burden on the loading issue, then Mr.
8 Kay is going to have to come forward and give either
9 evidence or an explanation or both.

10 MR. SCHONMAN: Well, Your Honor --

11 JUDGE SIPPEL: Let me finish my statement.

12 MR. SCHONMAN: I'm sorry.

13 JUDGE SIPPEL: Well, I hesitated. Whether he
14 chooses to do that in some other way than the way that you
15 would like to see the evidence, that's up to him. How he
16 handles that issue is his concern, but right now, I'm trying
17 to get this case back on track. I don't see where waiting,
18 resolving the issue as framed here with respect to what you
19 want and what Mr. Friedman says Mr. Kay can or will provide,
20 doesn't have to be decided. It just doesn't have to be
21 decided today.

22 What else do you need to go to trial? You've got
23 to depose, say, half a dozen witnesses. Loading
24 information, we're going to put that to one side for now.
25 What else do you need?

1 MR. SCHONMAN: Your Honor, we anticipate the need
2 to inspect Mr. Kay's stations.

3 JUDGE SIPPEL: How many stations will that be?

4 MR. SCHONMAN: One hundred fifty-two.

5 MR. KELLETT: Minus probably 11, because he didn't
6 renew them.

7 JUDGE SIPPEL: Well, we're talking in excess of
8 100 stations are going to get inspected?

9 MR. SCHONMAN: Yes.

10 JUDGE SIPPEL: What does that have to do with
11 discovery in this case?

12 MR. SCHONMAN: That is part of discovery. There's
13 an issue to determine whether the stations have been
14 properly constructed and are operating.

15 JUDGE SIPPEL: If they're properly constructed and
16 operating, those are two issues, two factual issues. How
17 long would that kind of an inspection take, and who would
18 conduct the inspection?

19 MR. KELLETT: The field office would conduct the
20 inspection and the inspection would be anticipated to take a
21 week to two weeks.

22 JUDGE SIPPEL: All right, well, that's not too
23 long. That could be done by the field office while the
24 depositions are going on.

25 MR. KELLETT: Actually, we'd prefer to have the

1 results of that inspection before we depose Mr. Kay and
2 possibly some of the other witnesses, because we can't ask
3 about particular stations if we haven't inspected them.

4 We are ready to do that, though, within the next
5 few weeks.

6 JUDGE SIPPEL: What would be more than my
7 suggestion would be that when you leave here today, you get
8 that process started, whatever it takes. Get people on
9 notice and get them out there.

10 Now, what is Mr. Kay going to do to cooperate with
11 that effort?

12 MR. FRIEDMAN: Obviously, we'll coordinate the
13 time and place to have them opened up and made available.

14 JUDGE SIPPEL: There you go.

15 MR. KELLETT: I think there are conflicting rules.
16 One is that the Commission can inspect any time within 24
17 hours, but then there's a hearing rule for everybody on a
18 five day notice provision. We have no trouble complying
19 with the five day.

20 JUDGE SIPPEL: Mr. Friedman just said, you work it
21 out and he's going to cooperate with you, so don't worry
22 about rules right now.

23 MR. KELLETT: Okay.

24 JUDGE SIPPEL: Just get the job done, okay?

25 MR. KELLETT: All right.

1 JUDGE SIPPEL: Again, we're not talking about too
2 much? We're talking about a week to two weeks. If you
3 start the process tomorrow, it may be able to be done the
4 middle of April. Should be.

5 Let's move on. What else do you need besides
6 inspection of field offices?

7 MR. KELLETT: We need additional documents since
8 the time of our last document request.

9 JUDGE SIPPEL: What's the nature of the documents
10 that you need?

11 MR. KELLETT: For one thing, Mr. Kay has, during
12 our lapse, gone and deposed everybody with respect to this
13 case and asked numerous questions.

14 JUDGE SIPPEL: He's what, he's deposed people?

15 MR. KELLETT: Deposed them, yes.

16 MR. SCHONMAN: Your Honor, there's a private
17 lawsuit in which Mr. Kay is a plaintiff in California.

18 MR. KELLETT: It's multiple private lawsuits.

19 JUDGE SIPPEL: Depositions have been taken?

20 MR. KELLETT: In California.

21 JUDGE SIPPEL: In California on those lawsuits?

22 MR. KELLETT: Of everyone we have listed as a
23 potential witness in this case. I believe that's correct.
24 Am I correct on that?

25 MR. FRIEDMAN: There is a private lawsuit. I'm

1 not counsel in the lawsuit. There have been depositions
2 taken. I can't tell you how many parties and whether all
3 are listed on your list or not.

4 JUDGE SIPPEL: Are they under seal, these
5 depositions, or are they on the public record?

6 MR. FRIEDMAN: I have no idea. I'm not a counsel
7 in the proceeding.

8 JUDGE SIPPEL: Have you all checked on that, Mr.
9 Schonman?

10 MR. SCHONMAN: As to whether they're under seal or
11 not?

12 JUDGE SIPPEL: Yes.

13 MR. SCHONMAN: No, I have not checked that. I do
14 not know that, but these are documents which we would ask
15 Mr. Kay to produce, copies of these depositions.

16 JUDGE SIPPEL: Well, that can be gotten lickety
17 split, but what's going to be in the depositions, unless
18 there's a Court seal.

19 MR. SCHONMAN: Well, if there's not a Court seal
20 to the extent that people who we believe have information
21 and knowledge about this case have been deposed by Mr. Kay,
22 we'd like to see what they've said.

23 JUDGE SIPPEL: Yes, I understand that. Well,
24 maybe I don't understand that. What are the issues in that
25 case that relate to the issues in this case?

1 MR. KELLETT: It's our understanding from people
2 who have been deposed that they don't even necessarily know
3 the parties to the cases and they're brought in and they're
4 saying, what did you tell Anne Marie Wypijewski at the FCC,
5 what did you tell Riley Hollingsworth? Have you ever spoken
6 with Gary Schonman, and you know, it has nothing to do with
7 the Pitt v. Kay litigation, or whatever.

8 We're dealing, quite frankly, Your Honor, with
9 some people whose stories don't always jive out in L.A. Our
10 understanding is there are numerous suits going around by
11 Mr. Kay, and that he's been conducting discovery. He's been
12 somewhat frustrated because the people refuse to talk about
13 stuff that's not relevant to the issues of whatever
14 litigation that he's trying to depose them in, but that he
15 has conducted a significant amount of discovery. I
16 anticipate that he'd be using the depositions, possibly, to
17 discredit witnesses going forward.

18 MR. SCHONMAN: Your Honor, if I could just
19 summarize for a minute?

20 JUDGE SIPPEL: Well, I'll just make a comment that
21 what I'm hearing is very speculative, very speculative.
22 But, let me hear what you have to say?

23 MR. SCHONMAN: Your Honor, the private lawsuits in
24 which Mr. Kay is a plaintiff, it is our understanding, do
25 not directly involve the issues in this proceeding at the

1 FCC. However, it is our understanding that the people who
2 we have identified as individuals having knowledge and
3 information about this case, have been deposed by Mr. Kay's
4 counsel in connection with those private lawsuits, and that
5 they have been questioned about matters involving this case
6 here in Washington.

7 JUDGE SIPPEL: So what?

8 MR. SCHONMAN: To the extent that they have been
9 questioned and they have given testimony under oath
10 concerning matters which bear on this case, we would like to
11 see those statements.

12 JUDGE SIPPEL: Well, that's a very broad
13 representation that they might have been asked questions
14 about this case. It's the issues, the fact issues, that I'm
15 concerned with, and I'm not going to permit some kind of a
16 rummaging through some civil litigation to see how
17 interesting something might be that people are saying.

18 MR. SCHONMAN: Your Honor, it's not a fishing
19 expedition that we're on, but if we're going to put a
20 witness on the stand and Mr. Friedman is going to use prior
21 statements that these witnesses have made in order to
22 discredit their testimony before you, Your Honor, we should
23 be privy to those statements.

24 JUDGE SIPPEL: Well, that hasn't even happened
25 yet. We haven't even gotten to the point where we've

1 identified witnesses for depositions, let alone exchanged
2 identities of witnesses who are going to testify at the
3 hearing or given a summary of their testimony.

4 MR. SCHONMAN: May I make a suggestion?

5 JUDGE SIPPEL: You go ahead first.

6 MR. SCHONMAN: If Mr. Friedman would agree not to
7 use any statements made by these witnesses outside of the
8 depositions that we may take in this proceeding, then that
9 would resolve the problem.

10 JUDGE SIPPEL: Well, he can't use -- I mean,
11 they're not permissible into evidence unless he's going to
12 use them to cross-examine the witnesses. I mean, if it's a
13 prior inconsistent statement, that's one thing. But, he's
14 not going to walk in here and put these transcripts in the
15 record.

16 MR. KELLETT: It's relevant and discoverable if
17 that's the case.

18 JUDGE SIPPEL: Well, the discovery end of it is
19 something else again. I'm not finished with it, but from
20 right here, I'm talking about getting this, what you're
21 doing to get this case ready for trial and so far, this
22 business about the private lawsuit depositions, I'm not too
23 impressed with.

24 I think that there's a good way to handle it and
25 that would be the people that you depose, the people whom

1 you do select to depose, can be served with subpoena duces
2 tecum and they could be required to bring with them these
3 transcripts. Or, you can work out any kind of arrangement
4 that you can, certainly in advance with Mr. Friedman.

5 How much are you and Mr. Kay willing to cooperate
6 on that?

7 MR. FRIEDMAN: What?

8 JUDGE SIPPEL: I mean, assuming that there is no
9 Court seal, getting transcripts of testimony in the private
10 lawsuits and have them made available to Bureau counsel
11 before they depose these people, assuming that these are
12 people --

13 MR. FRIEDMAN: If they're asking for relevant
14 discovery materials, we will cooperate. I assume that Mr.
15 Schonman can find the case jackets in Los Angeles and get
16 the court reporters and buy transcripts.

17 JUDGE SIPPEL: No, I don't want to hear that
18 because let me tell you why. You're representing Mr. Kay
19 and Mr. Kay has some legal counsel who has ready access to
20 this material. In the spirit of cooperation, certainly that
21 material can be gotten to you very quickly. Again, this all
22 assumes no seal on them, and you know, you can make the
23 preliminary assessment. If it's a question that it's
24 totally not relevant or there are protective features to it,
25 we can address that at the time.

1 MR. FRIEDMAN: Certainly, if Mr. Schonman
2 propounds discovery, we'll respond to it.

3 JUDGE SIPPEL: Well, do we have to do it that way?
4 If he gives you a list of these witnesses that he's going to
5 depose, why couldn't you undertake to say, once you receive
6 the identity of who those people are and you work out your
7 schedule, that there will be a time in advance of that
8 deposition that you will undertake to get these transcripts
9 for him, assuming all the other conditions and that there's
10 a reasonable period of time?

11 MR. FRIEDMAN: Assuming that there are no problems
12 with the transcripts, we will do what we can to get the
13 transcripts available.

14 JUDGE SIPPEL: All right. Now, what's wrong with
15 that procedure? Mr. Schonman, I'm asking you that question?

16 MR. SCHONMAN: Your Honor, we can obtain copies of
17 the transcripts during discovery. The easiest way we can
18 obtain them is the best way.

19 JUDGE SIPPEL: Well, you have another way of doing
20 it, of course. I'm not trying to help you try your case,
21 I'm trying to help this case get moved along. You can
22 always go to the courthouse and get the transcripts the way
23 that Mr. Friedman is suggesting. You will have, if they're
24 public record, you will have them regardless of the
25 relevance of the material to this proceeding.

1 I would suggest, if that's the route that you're
2 going to take, that you get somebody in one of the regional
3 offices of the Commission to start looking into that, to get
4 somebody right out there to the courthouse. If you think
5 that this material is so crucial for your preparation, that
6 should be started again tomorrow. Unless, again, and Mr.
7 Friedman has made a reasonable advancement of how his client
8 is willing to cooperate. But, if that's not satisfactory to
9 you, you can move in both directions.

10 MR. SCHONMAN: Your Honor, I'd like to make it
11 efficient and expeditious. We want to move this along, too.
12 What I'd like to do is be able to identify the individuals
13 who we believe have been deposed, and to the extent that
14 they've given testimony about information which is relevant
15 to this proceeding, we would like copies of that. It is
16 like any other document request we would do. We're not
17 seeking anything that's not relevant to this case. In fact,
18 we're limiting it to just relevant information.

19 But, I think it would help both Mr. Kay and the
20 Bureau if we identify with some particularity what it is we
21 want. That way, there's no misunderstanding. We can do
22 that expeditiously. I think we can do a document request
23 perhaps by the end of next week.

24 JUDGE SIPPEL: Let me just limit what you're
25 suggesting here to witnesses that you are prepared to

1 represent as being the witnesses that you're going to
2 depose. In other words, I don't want to see every witness
3 that may have appeared in every case that Mr. Kay is
4 bringing in the state system. There has to be some factor
5 of relevance here, and you're the one who determines the
6 relevance, who are the witnesses you're going to call to be
7 deposed.

8 MR. SCHONMAN: Your Honor, we don't plan on
9 requesting depositions of the entire universe of people who
10 have perhaps been deposed in the private lawsuit in
11 California. To the extent that any individuals whom we have
12 identified as having knowledge and information about this
13 case, to the extent that any of those individuals may have
14 been deposed in a private lawsuit concerning matters
15 relevant to this case, we would like copies of those
16 transcripts.

17 Now, we may not depose in this case all those
18 people. We may not depose all our witnesses. Mr. Kay may
19 want to depose our witnesses.

20 JUDGE SIPPEL: Again, I think you're moving a
21 little bit off the mark here of what I'm trying to
22 accomplish. I want to know, and I've got a date set for
23 this, I believe it's April 1. You're going to come up with
24 a list of who these witnesses are that you're going to
25 depose. That's going to be the universe. I'm barring again

1 something that you can't anticipate right now, but that is
2 going to be the universe of the witnesses that you're going
3 to use at the hearing. Whether you use them all, I don't
4 know, I mean, that's up to you.

5 MR. SCHONMAN: Are you ordering us, Your Honor, to
6 depose our own witnesses?

7 JUDGE SIPPEL: I'm ordering you to complete your
8 discovery. You represented to me that you have witnesses in
9 mind that you anticipate deposing.

10 MR. SCHONMAN: We have individuals whom we want to
11 depose. Whether we end up using them as witnesses at the
12 trial itself is a different story.

13 JUDGE SIPPEL: I understand. I understand that.

14 MR. SCHONMAN: Now, there are individuals whom Mr.
15 Kay may want to depose, and we will certainly want to attend
16 those depositions.

17 JUDGE SIPPEL: You will. I'm not talking about
18 his case right now. Let me start this again. The Bureau
19 has the burden of proceeding and the burden of proof.

20 MR. SCHONMAN: Yes, sir.

21 JUDGE SIPPEL: What do you need with respect to
22 deposition discovery to get into that position where you're
23 ready to put your case on?

24 MR. KELLETT: Your Honor, we've talked to our
25 witnesses. We have not talked to them continuously

1 throughout this break. We just found out a couple of weeks
2 ago about the remand.

3 However, we do not anticipate in large part
4 deposing any of those people.

5 JUDGE SIPPEL: I see.

6 MR. KELLETT: We anticipate deposing Kay, possibly
7 some of Kay's employees, and other people with relevant
8 knowledge who would be adverse to the Bureau. So, we're not
9 going to be choosing our witnesses from amongst the people
10 we depose. It will probably be from amongst the people Kay
11 has deposed.

12 MR. SCHONMAN: In other words, we don't anticipate
13 deposing our witnesses, we have already spoken with them.
14 We understand what they would likely say at trial. We
15 already know that.

16 MR. KELLETT: However, in order to choose among
17 our witnesses who is credible and not waste the Court's time
18 with people who are not credible, in a lot of ways, we think
19 Mr. Kay may know better than us at this point, because, as
20 you say, we're speculating, but that he has done discovery
21 of these same people in numerous, or at least more than one
22 civil lawsuit during this time.

23 That's the deposition testimony that's mostly
24 relevant to those issues, so we don't waste the Court's time
25 with irrelevant testimony or testimony that turns out to be